IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CEA No. 179 of 2006

Date of decision 5.3.2007

Commissioner of Central Excise Commissionerate, Delhi III, Gurgaon

.. appellant

Versus

M/s Jay Bharat Maruti Ltd. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mrs.Daya Chaudhary, Assistant Solicitor General of India for the appellant.

M.M.Kumar, J.

The revenue has approached this Court by filing the instant appeal under Section 35 G of the Central Excise Act, 1944 (for brevity 'the Act') challenging the order dated 24.1.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal (for brevity 'the Tribunal'). It is claimed by the revenue that the following substantial question of law would arise for the determination of this Court:

> " Whether penalty under Section 11 AC can be imposed on the assessee and interest under Section 11 AB can be levied in those cases where duty has been paid after detection of the shortage by the department but before issuance of show cause notice ?"

The Tribunal has set aside the penalty to the extent of 75 percent of the total duty under Section 11 AC of the Act and interest under

Section 11 AB of the Act and the order to the extent of payment of 25 percent of duty as penalty has been upheld.

It has remained undisputed that a show cause notice was issued to the assessee on 30.5.2001. It is alleged that shortage and discrepancies in the stock were admitted vide letters dated 16.2.2000, 24.7.2000 and 17.4.2001. On the basis of the afore-mentioned material the raw material finished goods were found to be short which were valued at Rs. 20,08,557/- and the Central Excise Duty assessed was Rs. 3,22,139/-. The Assessing Officer also imposed interest under Section 11 AB of the Act and penalty of equal amount under Section 11 AC of the Act. An amount of Rs. 80,534/- already paid was apportioned on account of penalty. On appeal, the Commissioner upheld the order passed by the Assessing Officer. However, the Tribunal accepted the appeal partially holding that only 25 percent of the amount of duty as penalty was imposable under Section 11 AC of the Act and interest so0ught to be recovered from the assessee was not recoverable under Section 11AB of the Act as the amount stood deposited before issuance of show cause notice.

After hearing learned counsel, we find that on fact and law the revenue has no case. As per the language of Section 11AB (2) of the Act no interest is imposable as duty was admittedly payable before May 5,2001. As far as penalty of 25 percent of the imposable duty is concerned, the same is also in continuity with first proviso to Section 11 AC of the Act which provides that if the duty is paid within 30 days of date of communication of order of Central Excise Officer determining the duty. First proviso was inserted w.e.f. May 12, 2000 and in the present case before even issue of show cause notice dated May 30, 2001 duty was paid.

Accordingly, we find there is no question of law involved in the present appeal. Dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

5.3.2007
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